IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.4.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.9531 of 1998

1.S.Udayashankar
2.U.Indirani
3.S.Karunakaran

.. Petitioners

vs.

1.State of Tamil Nadu represented
by Secretary to Government
Housing and Urban Development
Department, Fort St.George
Chennai-600 009

2.Chennai Metropolitan Development
Authority, rep., by its Member-
Secretary, Thalaimuthu Natarajan
Buildings, Gandhi Irwin Salai
Chennai-6000 008

3.District Revenue Officer
Kancheepuram

4.Special Tahsildar (Land Acquisition)
Maraimalainagar, kattankolathur
Chennai

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari as stated therein.

For Petitioner : Mr.Sathish Parasaran
For Respondents : Mr.C.Ramesh,
A.G.P.

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ORDER:

This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records comprised in the proceedings of 1st respondent dated 23.4.1998 in G.O.Ms.No.134 Housing and Urban Development (Nala 3(1) Department and quash the same as illegal and without jurisdiction.

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2.The 1st petitioner is the husband of the 2nd petitioner and 3rd petitioner is the brother of the 1st petitioner. They are aggrieved by the proceedings of 1st respondent dated 23.4.1998 in G.O.Ms.No.134 (Housing and Urban Development) Nala 3(1) Department and by that Government Order, 1st respondent sought to cancel the proceedings by which the lands of the petitioners were released from the acquisition proceedings.

3.The brief facts are as under:

4.The 1st respondent issued a Notification under Sec.4(1) of the Land Acquisition Act, 1894, hereinafter called 'the Act', in G.O.R.No.1935 Rural Development and Local Administration dated 2.8.1974, by which various lands situated in and around Tirukatchur village were sought to be acquired for the purpose of establishment of a new satellite town to be known as Maraimalai Nagar. The lands admeasuring 4108 acres situate in S.No.531/3, 531/5A, 531/5B, 531/5 C4, 534/2, 536, 537, 538, 535/1, 539/2, 540/2, 541 etc., in No.74, Tirukatchur village which were owned by the predecessors-in-title of the petitioners were acquired. However the predecessors-in-title made a representation for releasing the extent of 41.08 acres from the acquisition proceedings and considering their representation, the Government exempted lands to an extent of 25.92 acres only from the acquisition proceedings. Accordingly, a Government Order was issued exercising powers under Sec.48(1) of the Act releasing the above said lands from the acquisition proceedings. After the exemption granted by the Government, the petitioners purchased those lands from the predecessors-in-title in August 1988. The petitioners made substantial improvement in the lands and they have put up a huge complex on the lands where a service station was to be run by a leading Company. But after a lapse of 11 years the impugned Government Order was passed cancelling G.O.Ms.No.497 dated 23.3.1987 in which exemption was granted and thereby restored the possession which was prevailing before the date of releasing their lands from the Land Acquisition proceedings. Hence the petitioners have filed the above writ petition.

5.A counter affidavit has been filed by the respondents, in which it was admitted that certain portions of lands acquired by the Government were exempted by exercising the powers under Sec.48(1) of the Act. It was stated that the Government has the right to cancel their own order and there is no illegality in their action.

6.Heard the learned counsel for the petitioners and the learned Addl. Government Pleader for the respondents. I have also perused the documents filed and the judgment referred to by them in support of heir submissions.

7.Learned counsel for the petitioners strenuously contended that once the lands were released from acquisition by the Government, after a lapse of 11 years the order granting exemption could not be cancelled unilaterally that too, without giving any opportunity to the petitioners. In support of his submission, the learned counsel for the petitioners

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relied on the decision of the Delhi High court reported in AIR 1976 Del.166 (Jai Narain v. L.A. Collector, New Delhi).

8.Per contra, the learned Addl. Government Pleader submitted that when the Government has the power to pass an order releasing certain lands from the proposed acquisition proceedings, then the Government has the same power to cancel the earlier order granting exemption.

9.I have considered the rival submissions with regard to facts and citations.

10.It is not in dispute that by G.O.Ms.No.497 dated 23.3.1987, the Government declared that the lands measuring a total extent of 25.92 acres in various Survey Numbers be excluded from acquisition for the Maraimalai Nagar scheme. Only thereafter the petitioners purchased the lands. On 23.4.98 only, the Government has passed the impugned G.O., cancelling the order of exemption granted in G.O.Ms.No.497 dated 23.3.87.

11.Therefore the only question that arises for consideration in this writ petition is whether the Government has powers on 23.4.98 to cancel the earlier G.O. dated 23.3.87 granting exemption to the lands from the acquisition proceedings?

12.Under Sec.48(1) of the Act, 1894, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Only exercising this power under Sec.48(1) of the Act, the Government passed the G.O., on 23.3.87 withdrawing from acquisition of the lands measuring an extent of 25.92 acres. In such circumstances, it is not for the Government to simply cancel the order withdrawing from the acquisition proceedings, if the Government wants to acquire the same again. The Government should only follow the land acquisition proceedings afresh by issuing a fresh 4(1) Notification.

13.In AIR 1976 Delhi 166 (cited supra), the Delhi High Court held that if the Government withdraw from the acquisition of any land in exercise of the power conferred under Sec.48 of the Act, it is obvious that Sec.4 Notification has exhausted itself and if the Government wants to acquire the lands again, the Government shall have to act in accordance with the provisions of Sections 4 to 8 of the Act. The relevant portion reads as under:

> "5.The scheme of the Act is quite clear. Under Section 4 of the Act the appropriate Government issues a notification to the effect that the land is likely to be needed for any public purpose and objections are invited and disposed of. Finally if the Government is satisfied, a declaration is issued under Section 6 of the Act to the effect that the land is needed for public
> purposes and such declaration is published in the

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Gazette and is a conclusive evidence of the land being needed for public purposes. Thereafter the proceedings under the Act are initiated for making of the award and taking possession of the land in accordance with the provisions of the law."

"6.The power of withdrawal from acquisition is conferred by Section 48 of the Act, relevant portion of which runs as follows:-

"Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

"7.This power can be exercised by the Government after declaration under Section 6 had been issued but before possession has been taken. Should the Government withdraw from the acquisition of any land in exercise of the said power, it is obvious that Section 4 notification on the basis of which the land was being acquired has exhausted itself and if the Government considers it fit again to acquire the land, it shall have to act in accordance with the provisions of Sections 4 to 8 of the Act. Thus in this view of the matter
the contention of Mr.Dalal appears to be plausible."

14.In view of the above settled position, I am of the considered view that by passing the impugned order, the Government cannot cancel its earlier order of withdrawing from the acquisition proceedings in respect of the lands owned by the petitioners herein (who purchased the same after the withdrawal order) that too, after a lapse of 11 years.

15.It is also admitted in the counter-affidavit that 25.92 acres were withdrawn from the acquisition and as the lands are now needed, the Government cancelled the order of withdrawal. The Government has no power to cancel the order of withdrawal once it withdraw from the acquisition proceedings by exercising powers under Sec.48(1)of the Act. Without resorting to fresh land acquisition proceedings in accordance with the Act it is not open to the Government to reopen the order of withdrawal after more than a decade. The impugned order is certainly liable to be set aside and accordingly set aside.

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16.In the result, the writ petition is allowed as prayed for. W.M.P.Nos.14578 and 14579 of 1998 are closed and the WVMP.No.122 of 2007 is dismissed.

sks

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

1.The Secretary to the Government
Housing and Urban Development
Department, Fort St.George
Chennai-600 009

2.The Member Secretary
Chennai Metropolitan Development
Authority, Thalaimuthu Natarajan
Buildings,
Chennai-6000 008

3.The District Revenue Officer
Kancheepuram

4.Special Tahsildar (Land Acquisition)
Maraimalainagar, kattankolathur
Chennai

RS(CO)
dcp/8.5.07

W.P.9531/98.

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